

## **MINUTES OF SEPTEMBER 8, 2014**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 8, 2014, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with J. Everett Moore, Jr., – Sussex County Attorney, and staff members, Ms. Kelly Passwaters – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for July 7, 2014 as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that to approve the Minutes and Finding of Facts for July 21, 2014 as circulated. Motion carried 5 – 0.

Mr. Moore read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### **PUBLIC HEARINGS**

**Case No. 11441 – Craig Groff and Alana Groff** – south of Route 54 (Lighthouse Road) and being east of Grant Avenue 600 feet south of Lincoln Drive and being Lot 11 Block 6 within Cape Windsor Subdivision. (911 Address: 38771 Grant Avenue, Selbyville, Delaware) (Tax Map I.D. 5-33-20.18-67.00)

An application a variance from the side yard setback requirement.

Ms. Passwaters presented the case. Craig Groff, Alana Groff and Neil Brosnahan were sworn in and testified requesting a variance of 4.7 feet from the ten (10) feet side yard setback requirement for a proposed dwelling.

Mr. Groff testified that the Property is located in the Cape Windsor subdivision; that the variance is necessary for a proposed dwelling and to allow for parking on the Property; that the prior manufactured home was removed from the lot; that the Property is currently vacant other than two (2) concrete slabs; and that the proposed dwelling will be placed to allow for parking along the south side of the Property.

Mr. Brosnahan testified that there have been numerous variances granted in the neighborhood; that the community is unique; that the majority of dwellings in the subdivision are five (5) feet from the side property line; that the Applicants seek the variances to allow for the

house to be constructed in a manner consistent with other houses in the neighborhood and to allow for parking; that many of the mobile homes in the community are being replaced with single-family dwellings; that the difficulty has not been created by the Applicants; that the Sussex County setbacks are more restrictive than the Cape Windsor setbacks; that the variance is necessary to enable reasonable use of the Property; that the use will not be detrimental to the public welfare; that the variance is the least modification of the regulation at issue; that the variance is the minimum variance necessary to afford relief; that the proposed dwelling will be moved to five (5) feet from the north side property line so that the house will be a greater distance from the south side property line; and that the use will not impair the uses of neighboring and adjacent properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11441 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is only fifty (50) feet wide by ninety (90) feet deep;
2. The variance is necessary to enable reasonable use of the Property;
3. The hardship was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance is the minimum variance necessary to afford relief; and
6. The variance represents the least modification of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11442 – Dennis W. Pierce** – south of Road 388 (Deer Run Road) and being south of West Whitetail Drive, 1,100 feet southwest of Fawn Drive and being “Outlot A” in Deer Run Acres Subdivision (911 Address: None Available) (Tax Map I.D. 5-33-11.00-287.00)

An application for a variance from the minimum square footage for a parcel requirement.

Ms. Passwaters presented the case. Dennis Pierce was sworn in and testified requesting a variance of 1,870.37-square-feet from the 10,000-square-foot minimum lot size requirement for a parcel; that the Property is less than the 10,000 square feet minimum required by Sussex County; that he currently owns the parcel known as “Outlot A”; that he owns the adjacent lot as well; that the Property as it is recorded cannot be built on; that the lot has sewer and water connections; that he plans to improve the Property with a manufactured home and sell it; that there are similar sized lots in the area; that the proposed dwelling will meet all setback requirements; that the Property is

located in the Deer Run Park; that the size and shape of the Property make it unique; that Deer Run Park has been around for approximately thirty (30) years; that the community has other manufactured homes located therein; that he cleared and backfilled the lot in order to prepare it for the placement of a home; that the variance is necessary to enable reasonable use of the Property; that the hardship was not created by him; that he is not proposing to change the lot size; that the variance will not be detrimental to the public welfare; that the variance will not alter the character of the neighborhood; and that the variance is the minimum necessary to afford relief.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11442 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The size and shape of the Property makes it unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The hardship was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11443 – Robert W. Hall & Janet Hall, Trustee** – southeast of Business Route 9 (Savannah Road) and being northwest of 2<sup>nd</sup> Street and southeast of 1<sup>st</sup> Street and northeast of Crestview Avenue. (911 Address: None Available) (Tax Map I.D. 3-35-12.06-21.00 and 23.00)

An application for variances from the side yard and rear yard setback requirements and a variance from the minimum square footage for a parcel requirement.

Ms. Passwaters presented the case. Robert Hall was sworn in to testify about the Application. Tim Willard, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Willard stated that the Applicants are requesting a variance of 0.1 feet from the ten (10) feet side yard setback requirement for an existing dwelling on Parcel 22, a variance of 13,000 square foot from the 20,000 square foot lot size requirement for Lot A, a variance of 13,000 square-foot from the 20,000 square-foot lot size requirement for Lot B, a variance of 12,000 square-foot from the 20,000 square-foot lot size requirement for Lot C, a variance of 0.2 feet from the twenty

(20) feet rear yard setback requirement for an existing dwelling on Lot C, and a variance of 12,000 square-foot from the 20,000 square-foot lot size requirement for Lot D.

Mr. Willard stated that the Applicants seek to subdivide Parcel 21 into two (2) lots (Lot A and Lot B); that the variances are necessary to develop the parcels; that there are non-conforming structures on the parcels; that the neighborhood consists of small lots; that developing Parcels 21 and 23 as larger lots would be inconsistent with the character of the neighborhood; that the Applicants intend to sell the properties once subdivided; that the buyers intend to construct stick-built dwellings on the lots; that similar variances were granted in the neighborhood in 2004 and 2009; that the variances sought are the minimum variances necessary to afford relief; that the Applicants propose to divide Parcel 21 into two lots consisting of 7,000 square feet each; that an existing shed on the proposed Lot A will be removed, therefore the requested special use exception and variance for that shed are not needed; that the lots have sewer available; that, since sewer is available to the lots, the minimum lot size requirement is only 20,000 square feet so the variance needed from the minimum lot size requirement for Lots A and B is only 13,000 square feet per lot; that the existing dwelling and shed on Parcel 22.1 will also be removed, therefore the requested variance for that shed will not be needed; that in 1978 the lots between the proposed subdivided lots were subdivided in similar fashion; that there are no variances needed for the already partitioned lots; that the Applicants intend to subdivide Parcel 23 into two (2) equal lots (Lot C and Lot D); that Parcel 23 is larger than Parcel 21 so the variances needed from the minimum square footage requirement for Lots C and D are only 12,000 square feet per lot; that the existing porch located on Lot C is 19.8 feet from the proposed rear yard property line so a 0.2 foot variance is needed; that the variances will not be detrimental to the neighborhood; that other nearby properties have previously been subdivided in a similar fashion and the Board approved variances necessary for those subdivisions; that houses in the neighborhood are modest homes; that the buyers plan to construct new affordable dwellings on the properties; that the properties are unique due to the size of the lots; that the lots are narrow; that developing homes on the full-sized lots would be inconsistent with the neighborhood; that the development will be an improvement to the neighborhood; and that the variances requested are the minimum variances necessary to afford relief.

Mr. Hall, under oath, confirmed the statements made by Mr. Willard as being true and correct.

Doug McLaughlin was sworn in and testified that he owns a nearby property; that he was concerned the Applicants were requesting variances for new construction; that he has no objection to the subdivision of the lots or to the building of single-family homes on the lots; and that he has no objection to the requested variances for the existing structures that will remain.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11443 for the requested variances for Parcel 21 and Parcel 23 based on the record made at the public hearing and for the following reasons:

1. The size of the lots and the development make the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0. The Board did not approve of the variances requested for Parcel 22 because the Applicants are removing the structures located thereon.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11444 – Wolfram H. Andrews & Arlene S. Andrews** – south of Route 54 (Lighthouse Road) and being east of Roosevelt Avenue 1,200 feet south of Lincoln Drive and being Lot 22 Block 7 within Cape Windsor Subdivision. (911 Address: 38815 Roosevelt Avenue, Selbyville, Delaware) (Tax Map I.D. 5-33-20.18-13.00)

An application for variances from the front yard and rear yard setback requirements.

Ms. Passwaters presented the case. John Barwick and Wolfram Andrews were sworn in and testified requesting a 0.1 feet variance from the five (5) feet front yard setback requirement for a proposed second floor deck and a variance of nine (9) feet from the twenty (20) feet rear yard setback requirement for a proposed set of stairs. Mr. Barwick submitted pictures and three (3) letters of support for the Board to review.

Mr. Barwick testified that the Property is located in the Cape Windsor development; that the Applicants seek to build a porch; that the Property is unique because it was previously developed as a mobile home community and has evolved into a community with single-family houses; that the Applicants intend to build a second floor deck; that the proposed deck will be the

same distance from the front yard property line as the neighbor's deck; that the existing house is already a non-conforming structure; that the proposed spiral staircase in the rear yard will give access between the existing first and second floor decks; that the Property cannot otherwise be developed without a variance; that variances will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the variances do not alter the essential character of the neighborhood; that the proposed use is actually consistent with other uses in the neighborhood; that the variances requested represent the least modifications of the regulations at issue; and that the use will not be detrimental to the public welfare.

Mr. Andrews testified that he has no outside access from the first floor to the second floor deck; that the stairs will provide better access; that the Applicants have a large family and the proposed deck and stairs will better accommodate the family; that the proposed addition would not block views from the neighbors who oppose the Application; that the structures have not yet been built and that he could build the second floor deck in compliance with the Sussex County Zoning Code; that there is no elevator access from the ground level but there is access to all floors of the house; that the house is elevated three (3) feet; that there are steps from the ground level to the front floor entrance; that the stairs will provide better access for his grandchildren to come in and out of the house; and that the proposed structures are the same as the structures on the neighboring properties.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Ms. Passwaters stated that the Office of Planning and Zoning had received a petition with fourteen (14) signatures in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

At the conclusion of the public hearing, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until September 22, 2014**. Motion carried 5 – 0.

**Case No. 11445 – Gerald Friedel & Susan Friedel** – west of Road 348 (Iron Lane) and being west of Seagrass Court 275 feet southwest of Seagrass Plantation Lane and east of Indian River Bay. (911 Address: None Available) (Tax Map I.D. 1-34-7.00-108.00)

An application for variances from the front yard and side yard setback requirements.

Ms. Passwaters presented the case. Gerald Friedel was sworn in and testified requesting a variance of ten (10) feet from the thirty (30) feet front yard setback requirement, a variance of five (5) feet from the ten (10) feet side yard setback requirement, and a variance of 2.5 feet from the ten (10) feet side yard setback requirement for a proposed dwelling; that the Board approved the same variances in August 2005 but that approval expired; that due to the economy and the lack of a sewer connection, the dwelling was not constructed at that time; that water and sewer connections are now available; that a paved road has also been constructed; that the Property is adjacent to the Indian River Bay; that he seeks a five (5) feet setback from the north side property line; that the existing dwelling was five (5) feet from the north side property line but has since been demolished; that the adjacent property on the north side is a common area used for water access; that he seeks a 2.5 feet side yard variance from the south side property line setback; that the lot is very narrow and shallow making it unique in size; that the proposed variances will afford him adequate room in the front yard to park a vehicle; that the prior dwelling and other dwellings in the neighborhood were constructed close to the road; that a hardship would be created in order to comply with the Sussex County Zoning Code; that the Property cannot otherwise be developed; that the variances are necessary to enable reasonable use of the Property; that the variances will not alter the essential character of the neighborhood and should enhance property values therein; that the proposed use will not be detrimental to the public welfare; that the variance represents the least modification of the regulation at issue; that there have been no changes since the original application in 2005.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11445 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its narrowness;
2. The variances are necessary to enable reasonable use of the Property;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
4. The need for the variances has not been created by the Applicants;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11446 – Bruce Lane & Leslie Lane** – east of Ocean Drive and 100 feet south of Far View Road and being Lot 5 within North Shore Subdivision and north of Town boundary of Henlopen Acres. (911 Address: Non Available) (Tax Map I.D. 3-34-8.17-6.00)

An application for variances from the side yard setback requirements.

Ms. Passwaters presented the case. Randy Burton was sworn in and testified requesting a variance of 0.1 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 0.3 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 0.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of seven (7) feet from the ten (10) feet side yard setback requirement for existing HVAC equipment, and a variance of four (4) feet from the ten (10) feet side yard setback requirement for an existing set of steps.

Mr. Burton testified that he is a local builder; that he started construction of the dwelling three (3) years ago; that in the beginning of construction there were engineering issues; that the dwelling required 145 pilings, which were each 75 feet long and driven into the ground for the foundation; that the majority of a previous dwelling was demolished prior to construction; that a previous request for a variance for a pool was denied and that the pool has been brought into compliance with the zoning requirements; that during this process a calculation error was made and created the encroachments; that the construction project was extremely complicated; that the existing dwelling is over 9,000 square-feet in size; that the Property has a unique condition; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicants; that his company created the hardship; that the variances will not affect the essential character of the neighborhood; that the use is not detrimental to the public welfare; that the neighbors support the Application; that the use will not impair the uses of the neighboring and adjacent properties; and that the variances are the minimum variances necessary to afford relief.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11446 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and



6. The variances requested represent the least modifications possible of the regulations at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11447 – Joseph M. Weedon** – south of Road 277 (Angola Road) and being wet of Holly Way West 100 feet north of Woodland Circle and being Lot 28 Block O Section 2 within Angola-By-The-Bay Subdivision. (911 Address: 22687 Holly Way West, Lewes, Delaware) (Tax Map I.D. 2-34-11.20-8.00)

An application for a variance from the side yard setback requirement.

Ms. Passwaters presented the case. Joseph Weedon was sworn in and testified requesting a variance of one (1) foot from the ten (10) feet side yard setback requirement for an existing covered porch; that the Property is located in the Angola by the Bay community; that he obtained a building permit to construct the covered porch; that the roof is located over the kitchen door and protects it from the weather; that he has replaced the door numerous times and has still experienced flooding issues; that the Homeowners Association and the neighbors support the Application; that the lot is narrow making it unique; that the difficulty was not created by the Applicant; that the variance is necessary to enable reasonable use of the Property; that the variance will not alter the character of the neighborhood; and that the variance requested is the minimum variance to afford relief.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11447 for the requested variance based on the record made at the public hearing and for the reasons stated:

1. The condition on the Property is unique due to the leaking problem in the house;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

### **OLD BUSINESS**

**Case No. 11416 – Louis J. Travalini** – west of Road 347 (White’s Neck Road), 240 feet south of Road 349 (Old Mill Road) (911 Address: None Available) (Tax Map I.D. 1-34-8.00-420.00)

An application for a special use exception requesting a determination, in a case of uncertainty, for accessory buildings on a vacant lot.

Ms. Passwaters read a letter to the Applicant requesting to withdraw the Application.

The Board discussed the case, which has been tabled since August 18, 2014.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception and the request to withdraw the Application be **denied**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Meeting Adjourned 9:05 p.m.**